

## HUMAN SERVICES BOARD

# INTRODUCTION

Testimony was taken on two hearing dates. Petitioner obtained representation for the second hearing date. The decision is based on the evidence adduced at hearing.

1. The petitioner is a single parent of one child, born November 18, 2008. The petitioner is also the

biological parent of three minor children who have been adopted by petitioner's mother.

2. On December 7, 2007, petitioner was injured when she was struck by a car. Petitioner obtained legal representation regarding the accident.

3. On September 10, 2008, the petitioner entered the Lund Family Center, a program that provides support, counseling, and education for pregnant young women. At the time petitioner entered the Lund Home, she was not receiving RUFA benefits.

4. Petitioner was assigned to a team at the Lund Family Center. S.M. is a clinician and headed petitioner's team. She met with petitioner weekly. The team met monthly. S.M. testified that she learned from petitioner that petitioner would be receiving an insurance settlement close to the time petitioner would receive the monies. S.M. was on vacation in early December 2008, the time petitioner received her insurance settlement. She testified that she did not know whether others at the Lund Family Center were aware that petitioner was awaiting an insurance settlement.<sup>1</sup>

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<sup>1</sup> Team meetings address petitioner's progress and service needs regarding the programs provided by the Lund Center. There was no testimony that petitioner's RUFA status and/or car accident were referenced at team meetings.

5. When petitioner reached the eighth month of her pregnancy, she became eligible for RUFA assistance; her grant started on November 5, 2008. V.Z. was assigned as her eligibility worker during late October 2008. After petitioner's child was born on November 18, 2008, S.F. was assigned as petitioner's RUFA case manager whose duties included creating a Family Development Plan with petitioner. S.F. was and continues to be under contract to the Department. S.F. is located at the Lund Family Center.

6. On December 8, 2008, S.F. received a telephone call from petitioner's attorney asking how receipt of settlement monies would impact petitioner's benefits. S.F. testified that this telephone call was her first notice that petitioner was receiving a settlement. S.F. referred the attorney to petitioner's eligibility worker for information.

S.F. testified that she told petitioner that the settlement could affect her grant and told her to contact V.Z. S.F. further testified that she was not familiar with all the regulations involving the receipt of lump sum income.

7. On December 10, 2008, S.F. noted in her case notes that petitioner received a settlement of \$11,000+ and that she contacted the eligibility worker, V.Z., about the

settlement. V.Z.'s CATN notes confirm receiving information about the settlement on December 10, 2008.

8. On December 11, 2008, S.F. and petitioner spoke and petitioner reported the settlement amount of \$11,153.53.

9. Petitioner was not given any information from S.F. or from any other Department employee that the lump sum rule could lead to her disqualification from RUFA benefits or that certain expenses were allowed under the lump sum rule to shorten the disqualification period or that petitioner could close her RUFA grant prior to receipt of the settlement to avoid the lump sum rule. By December 10, 2008, the option to close her grant to avoid the lump sum rule was no longer available to petitioner.

10. V.Z. sent petitioner a Verification Request on December 16, 2008 asking for information about the insurance settlement.

11. S.F.'s case notes indicate that she met with petitioner on December 22, 2008 and that she told petitioner to be cautious about how the settlement was used as the monies may affect her benefits.

12. During January 2009, petitioner provided S.F. with copies of receipts. S.F. used the receipts to prepare a list of expenditures that were forwarded to V.Z. on or about

January 20, 2009. S.F. did not show petitioner this list before sending it to V.Z.

13. V.Z. reviewed the list of expenditures and concluded that none of the monies could be excluded under the lump sum notice.

14. The Department sent petitioner a Notice of Decision dated January 23, 2009 that her RUFA benefits would end February 15, 2009 due to the receipt of unearned income (settlement) of \$11,153.50 and that petitioner would not be eligible for RUFA until December 19, 2009 (a period of 11.18 months). Petitioner appealed prior to February 15, 2009. She is receiving continuing benefits.

15. Petitioner testified at hearing. Petitioner was aware December 8, 2008 that she would be receiving an insurance settlement. Her bank records show that \$9,143.50 of her settlement was deposited in her account on December 10, 2008 and that she first withdrew monies from her account on December 11, 2008.<sup>2</sup> Petitioner testified that she told Lund Family Center staff, S.M. and G., about her pending settlement after being admitted to Lund. She assumed that the Department would be aware of the settlement because she told Lund staff.

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<sup>2</sup> The remaining \$2,000 must have been given to petitioner in cash.

On the first hearing date, Petitioner testified that her attorney told her she could keep \$2,000 and should spend down the remainder of her settlement within twenty days to remain eligible for Medicaid. At the continued hearing, Petitioner testified that her attorney told her to contact her caseworker and she testified that her attorney called S.F. on December 8, 2008 to seek information about the impact of the settlement on her benefits.

Petitioner testified that she paid her mother \$6,000. Petitioner rented from her parents off and on after turning eighteen years old. The rental payment was \$450 per month; she paid intermittently and made a one-month payment prior to her admission to the Lund Family Center. Petitioner testified that she owed her mother about three years of unpaid rent. The petitioner testified that her mother paid for her car registration, insurance as well as fines and other costs so petitioner was able to obtain her driver's license. She testified that she paid Unicel \$315.99 for past due charges for the telephone she used although the account was in her mother's name. Petitioner used the remaining monies for Christmas gifts such as clothing, toys, and other items for all her children.

Petitioner supplied a copy of the Unicef bill and a notarized statement from her mother documenting receipt of \$6,000 to repay monies for petitioner to get her license back including fines, unpaid rent, and replacement of carpets and repainting in the room used by petitioner, and monies paid for petitioner's necessities. Petitioner testified that her mother does not believe she has been repaid in full.

Petitioner testified that if she had been aware of how her settlement could be treated under the lump sum rule, she would have taken different action.

ORDER

The Department's decision is affirmed in part and the period of disqualification is modified consistent with this decision.

REASONS

The RUFA program provides financial assistance to low income households who have minor children. To be eligible, a household must meet income and resource tests. A household will be eligible only if their available monthly income is less than the payment standard and their resources are less than the maximums. W.A.M. § 2240.

The petitioner's receipt of an insurance settlement triggered the lump sum rule found at W.A.M. § 2250.1. The pertinent sections state:

Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below...

Lump sum payments which are not excluded should be added together with all other non-Reach Up income received by the assistance group during the month. When the total less appreciable disregards exceeds the standard of need for that family, the family will be ineligible for Reach Up for the number of full months derived by dividing this total income by the need standard applicable to the family...

The period of ineligibility due to a lump sum may be recalculated if:

...

2. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following...

e. repair or purchase of one motor vehicle per Reach-Up assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

...

g. payment of expenses which meet the following criteria:

(1) The bills were overdue as of the date the lump sum income was received.



(2) The bills were the legal liability of the client or other member of the assistance group.

(3) The client provides documentation that the lump sum was used to pay the bills.

Eligible expenses under "g" above are as follows...

a. overdue rent

...

f. overdue utility bills

g. overdue telephone bills...

It is well-settled that the Department has an affirmative duty to advise applicants and recipients of their rights under the RUFA program. Lavigne v. D.S.W., 139 Vt. 114 (1980); Stevens v. Department of Social Welfare, 159 Vt. 408 (1982). That affirmative duty was not met in this case. Because the petitioner was not informed of the operation of the lump sum rule or her options, the petitioner now argues that the Department should be equitably estopped from applying the lump sum rule in her case.

It is also well-settled that the Board can apply equitable estoppel in cases provided the petitioner can show that all four essential elements of equitable estoppel are met. Stevens, *supra*. The four elements are:

(1) the party to be estopped must know the facts;

(2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended;

(3) the party asserting estoppel must be ignorant of the true facts; and

(4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Stevens, supra; Burlington Fire Fighter's Ass'n. v. City of Burlington, 149 Vt. 293 (1988).

The Board addressed the application of equitable estoppel to lump sum cases on several occasions. The Board found that the Department was equitably estopped from applying the lump sum rule in Fair Hearing Nos. 11,745 and 13,119. An opposite conclusion was reached in Fair Hearing No. 13,342.

Certain facts stand out in the cases where the Board applied equitable estoppel. In each case, the petitioner gave the Department advance notice (over several months) and repeatedly asked their caseworkers if their grant would be affected and what they needed to do to keep their grants. In each case, the caseworkers told the petitioners to report the receipt of monies and to keep receipts of their expenditures. The caseworkers did not inform the petitioners of the lump sum rule and that they could be found ineligible for a period

of time if they did not use their monies for certain expenses and they were not informed they could close their grant in advance of receiving their monies and reapply at a future date. Both petitioners relied on their caseworkers' advice by informing their caseworkers of the receipt of their monies and supplying a record of their expenditures. After using their monies, the petitioners were informed their grant would close and they would not be eligible for benefits for several months. The Board found that (1) the Department was aware of the facts based on the petitioners' advance and repeated information, (2) the Department was aware that the petitioners would act on their advice based on the petitioners' repeated requests about what they needed to do to keep their grants, (3) the petitioners were unaware of the lump sum rule and (4) the petitioners relied on the Department to their detriment.

The facts in Fair Hearing No. 13,342 are different. The petitioner did not ask the Department for advice during the two years her lawsuit was pending and, then, did not inform the Department of the receipt of her settlement (albeit upon advice of her attorney). The Board presumed that petitioner could meet the first three elements of equitable estoppel given the caseworker's testimony that if she had been aware

of the potential settlement, she would not have informed petitioner of her option to avoid the lump sum rule by closing her case. But, the Board found that there was no detrimental reliance by the petitioner on the Department's conduct.

The crux is whether the petitioner detrimentally relied on the Department in this case. Although petitioner informed her Lund Family Center counselor of the pending settlement sometime in November 2008, there is no record of petitioner informing the Department of the pending settlement until December 8, 2008 when petitioner's attorney contacted S.F., petitioner's RUFA case manager. Petitioner was responsible for keeping the Department informed as to potential income and did not do so. Informing employees of the Lund Family Center is not the same as informing the Department.

It is problematic that the Department did not inform petitioner of her options. But, it is equally problematic that petitioner did not make formal contact with the Department until December 8 and that petitioner did not wait to spend her settlement until receiving information from the Department or her attorney regarding how the settlement could affect her RUFA benefits. Her injuries did not come from taking the Department's advice. The petitioner did not

detrimentally rely on the Department; the fourth element of equitable estoppel cannot be found.

The remaining issue is whether the petitioner should have her period of ineligibility shortened due to paying an overdue telephone bill and due to repaying her mother for unpaid rent and damages and monies used to restore her driver's license and transportation. The items claimed fall under the criteria in W.A.M. § 2250.1 leaving unearned income of \$4,837.54 (approximately a five month disqualification period). Because petitioner received continuing benefits, she should be assessed an overpayment for the period in which she should have been disqualified. The overpayment should be recouped from petitioner's RUFA benefits pursuant to the appropriate regulations.

Based on the foregoing, the Department's decision to disqualify petitioner due to receipt of lump sum income is affirmed in part but the decision to disqualify petitioner for 11.18 months is modified consistent with this decision. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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